MULTIMEDIA UNIVERSITY

STUDENT ID NO

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# MULTIMEDIA UNIVERSITY

# FINAL EXAMINATION

**TRIMESTER 1, 2022 / 2023 SESSION (TERM ID 2210)**

## UCP4612 – CRIMINAL PROCEDURE I

(All Sections / Groups)

13 FEBRUARY 2023
Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

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**INSTRUCTIONS TO STUDENT**

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes only in their question paper. Students then have the remaining **three hours** in which to answer the questions.

2. This question paper consists of 5 pages with 5 questions only.

3. Attempt **ALL** questions in **PART A** and any **ONE** question in **PART B**. The distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of the following statutes into the exam venue:
   i. Criminal Procedure Code; and
   ii. Penal Code
   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Write all your answers in the Answer Booklet provided.

**PART A:** Attempt **ALL** questions.

## QUESTION 1

**Answer all parts of this question.**

The accused was charged under s 302 of the Penal Code for strangling his wife to death at No. 27, Jalan 2/3, Taman Bear Hill, Bukit Beruang, Melaka where she lived separate and apart from the accused, since 2021. Saitama, a chauffeur, was in the house at the time of the incident. According to him, the accused was the last person with the deceased at about 7 a.m. on 22 October 2022. The accused sent him out to buy breakfast. However, at 7.45 a.m. the accused telephoned and summoned him to return immediately. When he reached the house at 8.10 a.m., he found the accused crying. The accused said that the deceased had passed away. The deceased was lying on a bed in a room on the second floor. The accused instructed him to clean up the place, which he did with a mop. The accused instructed him to help carry the deceased to the lower floor. Corporal Genos recorded Saitama's statement and later lodged a police report at IPD Bukit Beruang.

(a) During trial, the prosecution was unable to produce Saitama as a witness. His current whereabouts is unknown to the prosecution. The prosecution applied to adduce the s 112 of the Criminal Procedure Code statement of Saitama to make up for want of his oral testimony. The defence objected and contended that the statement was involuntary given and cautioned should have been administered to be admissible as evidence.

Analyse the above facts and provide your argument in support of the prosecution's application to adduce s 112 of the Criminal Procedure Code statement of Saitama including a rebuttal against the defence's contention.

(12 marks)

(b) The defence counsel also raised a preliminary objection that the police had no right to investigate the case due to the non-existence of any police report against the accused. They argued that the report lodged by Corporal Genos does not constitute first information report under s 107 of the Criminal Procedure Code but a statement under s 112 of the Criminal Procedure Code which is inadmissible as evidence.

Examine the defence's objection and convey your argument as a prosecution in this case.

(13 marks)

**(Total: 25 marks)**

**Continued...**

## QUESTION 2

**Answer all parts of this question.**

Demang, a known pickpocket, and petty thief with a criminal record, was arrested by Ahmad, an off-duty police constable while he was in the act of running away after picking the pocket of an elderly man at Mydin Mall, MITC, Ayer Keroh, Melaka. Upon being wrestled to the ground by Ahmad, Demang was asked to declare items or contraband if any on his body which was unlawful. Not receiving an answer, Ahmad then proceeded to run his hands quickly over the outer garments of Demang, finding three (3) wallets one of which belonged to the elderly man and two belonging to persons unknown containing credit cards and money.

At the Ayer Keroh police station, Demang during an idle chat with Ahmad, allegedly said that there were more items which he had stolen stashed away at his house in Kampung Lipat Kajang, Jasin, Melaka. Inspector Salam, the officer in charge of the station, immediately instructed Ahmad orally and in writing, to search Demang's house. Accompanied by Demang, the police party consisting of Ahmad and other policemen, found other valuable items suspected of belonging to others deposited in several places in the house as allegedly told by Demang. They also arrested Buyong who was Demang's housemate, when he returned home minutes after the search was concluded. Buyong had resisted arrest but was quickly apprehended. A search list of items seized was given to Demang and Buyong individually.

With reference to the statutory provisions and case law, answer the following questions:

(a) Analyse the proper charges to be preferred against Demang and Buyong and the proper forum to hear their cases.

(10 marks)

(b) Demang now contends that: -

(i) his arrest, body search and seizure of the articles at the time of the commission of the theft was illegal; and
(ii) the police search on his house was illegal and the seizure of the articles were in breach of proper procedure; and
(iii) the items found at his house were the result of an illegal search and are illegally obtained evidence and therefore inadmissible.

Based on Demang's contentions, elucidate, as the Prosecution, your arguments in reply to Demang's argument above.

(15 marks)

**(Total: 25 Marks)**

**Continued...**

## QUESTION 3

**Answer all parts of this question.**

(a) "The Applicant by way of Notice of Motion ('NOM') supported by an Affidavit in support sought the following orders from this Court:
(i) A declaration that Datuk Seri Gopal Sri Ram is not a 'Fit and Proper Person' to be appointed as a Senior Deputy Public Prosecutor pursuant to Section 376(3) of the Criminal Procedure Code;
(ii) An order that Datuk Seri Gopal Sri Ram be disqualified from continuing to act as a Senior Deputy Public Prosecutor ('SDPP') and/or to appear on behalf of the Public Prosecutor in Kuala Lumpur High Court Case No: WA-45-6-10/201 [Public Prosecutor v Muhammad Shafee Bin Md Abdullah]".

*(as seen in **Muhammad Shafee bin Md Abdullah v Public Prosecutor 2019 MLJU 755**).*

Analyse the above application considering the powers of Public Prosecutor.
(10 marks)

(b) In an application to transfer a criminal case from one High Court to another, examine whether a High Court possessed the powers to effect lateral transfer of a case.
(10 marks)

(c) Examine the four situations in which that the magistrate may take cognizance of an offence.
(5 marks)

**(Total: 25 Marks)**

**Continued...**

**PART B:**

**Instruction:** Attempt **ONE** question **only**.

**QUESTION 4A**

**Answer all parts of this question.**

(a) Mangga was charged in the Sessions Court at Kuala Lumpur for the offence of rape of a minor named Aslina on 13 December 2022 at about 3.00 pm along Jalan Emerald, Kuala Lumpur. The trial is pending. Mangga was also charged in the Sessions Court at Kuala Lumpur for the offence of causing hurt to Citra on 31 December 2022 at about 11.00 pm along Jalan Pelita, Kuala Lumpur. The trial is also pending. The defence counsel applies for the case to be a joint trial. Bijak, the Deputy Public Prosecutor objected to a joint trial.

With reference to relevant statutory provisions and decided cases, ascertain whether Bijak's objections to a joint trial may succeed.

(15 marks)

(b) Errors in stating either the offence or the particulars in the charge or omission to state the offence or particulars, shall not be regarded at any stage of the case as material unless the accused was in fact misled by an error or omission.

With reference to statutory provisions and case law, ascertain the effect(s) of the statement above.

(10 marks)

**(Total: 25 Marks)**

**Continued...**

**OR**

**QUESTION 4B**

**Answer all parts of this question.**

On 1 December 2022, Jack Riddles, a government minister, entered into a contract of a total amount of RM500,000 with Syarikat Bina Jalan Bersama to build and repair roads along Taman Setia Roar, Jasin. The actual total cost of the work was only RM280,000 whereas the balance sum was banked into the personal CIMB Bhd account 70004017 of Jack Riddles on 10 January 2023. Upon an audit conducted by the Government Treasury, found that Jack Riddles had failed to account to the Government Treasury for this money. Jack Riddles was charged under Section 409 of the Penal Code.

The charge reads as follows:

*That you on or about 10 January 2023, at Jasin District, State of Melaka, being jointly entrusted with certain property, to wit, RM220,000 collected for the contract by Syarikat Bina Jalan Bersama, in your capacity as a public servant and that you thereby committed an offence punishable under section 409 of the Penal Code.*

During the trial the charge was amended by the Prosecution to one under section 406 with an alternative charge under section 403 of the Penal Code.

Based on the above:-

(a) Draft the amended and alternative charge.

(10 marks)

(b) Advise Jack Riddles as to the legality of amending the charge during trial and the tendering of an alternative charge.

(15 marks)

**(Total: 25 marks)**

**End of Page**